

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.O.P.No.20199 of 2016

Ghayazullah

... Petitioner

Vs.

State Rep. By
The Inspector of Police,
St. Thomas Police Station,
Chennai-16

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to pass an order of direction directing the respondent to enquire the case in Cr.No.787/2010 on the file of the respondent and to file a charge sheet and to take appropriate action.

For Petitioner : Mr.S.Madhusudanan

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

The petitioner has filed this petition to direct the respondent to enquire the case in Cr.No.787/2010 on the file of the respondent and to file a charge sheet and to take appropriate action.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. On the complaint lodged by the petitioner, the respondent police registered a case in Crime. No.787 of 2010 on 18.10.2010 for the offences under Sections 294(b), 323, 506(ii) IPC against the four accused and thereafter, the investigation did not proceed further. Therefore, the petitioner filed Cr1.O.P.No.2853 of 2015 for a direction to the respondent police to complete the investigation in Crime No.787 of 2010 and file a

charge sheet within a stipulated time. On 01.06.2015, this Court passed the following order in CrI.OP.No.2853 of 2015:

"3. It is represented by the learned Additional Public Prosecutor that investigation was completed and a final report, closing the case as mistake of fact was filed on 31.10.2010 before the learned Judicial Magistrate, Alandur and RCS Notice has also been served on the defacto complainant.

4. Recording the same, this Criminal Original Petition is closed with liberty to work out his remedies in the manner known to law."

4. The petitioner sought information under the Right to Information Act, from the office of the Judicial Magistrate, Alandur and has obtained a reply from the Public Information Officer/Chief Judicial Magistrate, Chengalpattu, on 20.08.2016, wherein it is stated as follows:

"There is no such FIR in Crime Number 787/2010 of St.Thomas Mount Police Station was received by the Judicial Magistrate Court, Alandur."

Therefore, the petitioner has once again approached this Court for the aforesaid direction.

5. Today when the matter was taken up for hearing Ms.C.Tamilarasi, Inspector of Police, Alangudi Police Station, All Women Police Station Station, Pudukottai District, is present. She was the Sub Inspector of Police in St.Thomas Mount Police Station and it was she who had registered the FIR in Crime No.787 of 2010.

6. On instructions, the learned Additional Public Prosecutor submitted that the investigation in Crime No.787 of 2010 was completed as early as 31.10.2010 and the case was closed as a mistake of fact. But the report was not filed before the Judicial Magistrate, Alandur, nor RCS notice was served on the de facto complainant. The case was once again taken up by the police and RCS notice was served on the de facto complainant on 02.05.2015.

7. Mr.Madhusudanan, learned counsel for the petitioner / de facto complainant submitted that the petitioner has received the copy of the RCS notice by registered post and that, when the petitioner went to the Court of Judicial Magistrate, Alandur for

the purpose of filing the protest application, the Magistrate stated that the FIR itself is not on the file of the Court.

8.The learned Additional Public Prosecutor also submitted that when the police went for filing the closure report, the Magistrate did not accept the closure report, that the original FIR is missing.

9. In the considered opinion of this Court, the missing of the original FIR, can be no reason for the aggrieved party to be left without any remedy.

10. Under such circumstances, this Court directs the respondent police and the Judicial Magistrate, Alandur to reconstruct the papers based on the records available in the case diary in Crime No.787 of 2010, within two weeks from the date of receipt of a copy of this order. Thereafter, the petitioner / de facto complainant will be given notice, so that he gets an opportunity to file the protest application.

With the above direction this petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pvs / ds
To

1. The Inspector of Police,
St. Thomas Police Station,
Chennai-16.

2. The Chief Judicial Magistrate,
Chengalpet.

3. The Judicial Magistrate,
Alandur.

4. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.20199 of 2016

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kra 06.10.2016